

#### **401 KAR 4:010. Water withdrawal permits, criteria, reports.**

RELATES TO: KRS 151.110, 151.112, 151.114, 151.116, 151.120, 151.182, 151.200, 151.210, 151.220

STATUTORY AUTHORITY: KRS 151.125(1), (3), (4), (9), (10), 151.140, 151.150, 151.160, 151.170

NECESSITY, FUNCTION, AND CONFORMITY: KRS 151.125(3) authorizes the cabinet secretary to adopt rules and regulations for water resources which he or she deems necessary to accomplish the purposes of KRS Chapter 151. KRS 151.125(4) authorizes the secretary to adopt rules and regulations with respect to procedural issues regarding water withdrawal permits. This administrative regulation is necessary to establish the requirements for permits to withdraw water and the reporting procedure to be used in conjunction with water withdrawal permits issued by the Division of Water.

Section 1. The necessity for water withdrawal permits shall be determined according to the following criteria:

(1) If the average withdrawal rate is more than 10,000 gallons per day, a permit shall be required except as exempted by KRS 151.140;

(2) If the withdrawal of water is made at a relatively constant rate each day and the average withdrawal rate is 10,000 gallons per day, or less, no permit shall be required; or

(3) If withdrawals are made on an irregular basis and at an irregular rate, permits may be required if the water withdrawn represents a significant portion of the available water supply or collection of withdrawal data is necessary for water resource planning purposes.

Section 2. Permit Issue Date and Effective Date. (1) Each permit shall clearly show:

(a) An issue date, which shall be the date on which a permit is signed by the cabinet representative; and

(b) An effective date, which shall be the date on which a permitted withdrawal may begin.

(2) The issue date may be up to three (3) years in advance of the effective date.

(3) Water allocated by a permit that is issued more than six (6) months in advance of the effective date shall be reserved for use by that applicant if:

(a) The requested amount of water is available from the proposed water source;

(b) There remains an amount of water that may be allocated for other competing uses; and

(c) The applicant provides to the cabinet additional project information and quarterly status reports that document the continued viability of and progress toward the completion of the project by the permit's effective date.

1. This shall include:

a. A proposal for securing financing of the project; and

b. A project schedule with the anticipated dates for all major milestones. These milestones shall include:

(i) Funding approval;

(ii) Commencement of construction;

(iii) Site preparation;

(iv) Construction of major structural or project elements;

(v) Completion of construction; and

(vi) Commencement of project operations and water withdrawal.

2. Quarterly status reports shall address each milestone listed in subparagraph 1b of this paragraph. Reports shall be due thirty (30) days after the end of each calendar quarter following the issuance date of the permit.

(4) For those permits having an issue date more than six (6) months in advance of the effective date, a project schedule may be amended and the permit's effective date extended up to one (1) year if the permittee demonstrates that circumstances beyond the control of the permittee have caused an unavoidable delay in the completion of the project.

(5) For those permits having an issue date more than six (6) months in advance of the effective date, withdrawals shall begin no later than six (6) months after the effective date.

(6) For those permits having an issue date more than six (6) months in advance of the effective date, a water withdrawal permit shall expire and become void if the holder of the permit fails to:

(a) Adhere to the project schedule as submitted at the time of permit issuance or as amended according to subsection (4) of this section;

(b) Comply with the interim reporting requirements; or

(c) Commence withdrawals within six (6) months after the permit effective date, including any extensions granted under subsection (4) of this section.

Section 3. Water Withdrawal Reporting Requirements. Reports of water withdrawn pursuant to permit shall be made as follows:

(1) Withdrawals made at a relatively constant daily rate shall be recorded daily and reported to the division monthly on the "Monitoring Results Submittal Form" and "Water Withdrawal Report Form," incorporated by reference in Section 4 of this administrative regulation.

(2) If withdrawals are made on an irregular basis and at an irregular rate, the division may specify recording frequency as the circumstances require. Reporting of withdrawal information to the cabinet shall be made monthly. Recording and reporting shall be done on the "Monitoring Results Submittal Form" and "Water Withdrawal Report Form," incorporated by reference in Section 4 of this administrative regulation.

(3) Increased reporting or recording frequency of the rate or volume of a permitted water withdrawal may be required if:

(a) A water withdrawal may adversely impact other water users, water quality, or aquatic habitat based on:

1. Scientific documentation;

2. Monitoring data; or

3. An observed or documented impact;

(b) The data is needed for water resources management or planning purposes; or

(c) There is insufficient data to determine the potential impacts of a water withdrawal.

Section 4. Incorporation by Reference. (1) The following material is incorporated by reference:

(a) "Monitoring Results Submittal Form, DEP 0056 (3/05)"; and

(b) "Water withdrawal report form, DEP 8058 (3/05)".

(2) This material may be inspected, copied, or obtained, subject to applicable copyright law, at the Kentucky Division of Water, 14 Reilly Road, Frankfort, Kentucky, Monday through Friday, 8 a.m. to 4:30 p. m. (1 Ky.R. 11; Am. 448; eff. 2-5-75; 31 Ky.R. 1721; 32 Ky.R. 101; 262; eff. 8-25-2005.)